

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Susan Gale Penley,

Debtor(s).

Address: 272 Wallace Circle, Lexington, SC 29073

Last 4 digits of SSN: 0701

C/A No. 16-1772-jw

Chapter 13

NOTICE OF MOTION/APPLICATION AND
OPPORTUNITY FOR HEARING

Debtor has filed papers with the court to use cash collateral, namely insurance proceeds.

Your rights might be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one).

If you do not want the court to grant the relief requested in the motion or you want the court to consider your views on the motion, then within fourteen (14) days of service of this notice, you or your attorney must:

File with the court a written response, return, or objection at: 1100 Laurel Street, Columbia, SC 29201

Responses, returns, or objections filed by an attorney must be electronically filed in ecf.scb.uscourts.gov.

If you mail your response, return, or objection to the court for filing, you must mail it early enough so that court will **receive it** on or before the date stated above.

You must also send a copy to: Reed Law Firm, P.A.; 220 Stoneridge Drive, Ste 301; Columbia, SC 29210

Attend the hearing scheduled to be heard **July 2, 2020, at 9:00 a.m.**, at the United States Bankruptcy Court, 1100 Laurel Street, Columbia, SC 29201. If no response, return, or objection is timely filed and served, no hearing will be held on this motion, except at the direction of the judge.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting relief.

Date: June 4, 2020

/s/ Eric S. Reed

Eric S. Reed

Reed Law Firm, P.A.

Attorney for Movant/Movant

D.C. ID # 7242

220 Stoneridge Drive, Ste 301

Columbia, SC 29210

(803)726-4888

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

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C/A No. 16-1772-jw

Chapter 13

**MOTION TO USE CASH
COLLATERAL**

Debtor moves the Court pursuant to 11 U.S.C. § 363(b)¹ and Fed. R. Bankr. P. 4001(b) for an order permitting Debtor to use cash collateral consisting of insurance proceeds resulting from the destruction of her residence at 272 Wallace Circle, Lexington, South Carolina (“Property”) which is subject to the first mortgage of Wells Fargo Bank, N.A. (“Creditor”) and the second mortgage of Palmetto Citizens FCU (“Palmetto”).

1. On April 8, 2016, Debtor filed for relief under Chapter 13 of the Bankruptcy Code. The Chapter 13 plan (“Plan”), confirmed on June 16, 2016, provides for the repayment of arrearages and the maintenance of regular payments.

2. The Property was destroyed by a fire. Debtor’s insurer, Safeco (“Insurer”) has issued insurance proceeds in the amount of \$163,371.75, made jointly payable to the Debtor and to Creditor. The total amount of Creditor’s secured claim is approximately \$62,000.00. Palmetto’s second mortgage is being paid through the Plan.

3. Debtor previously requested and obtained a court Order Authorizing Use of Cash Collateral, entered September 25, 2019, wherein Debtor was authorized to use the funds to rebuild her residence.

4. Debtor no longer wishes to use the funds to rebuild her residence. Instead, she requests approval to use the funds to pay the liens on the Property and to pay off the Chapter 13 Plan Base Balance, which is currently \$10,375.00. The remaining funds will be paid to the Debtor.

ARGUMENT

¹ All further references to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, shall be by section number only.

Section 363(b) provides that the “trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” Although § 363(b) only confers standing on its face to a “trustee,” § 1303 confers the powers of a “trustee” to a debtor applying §§ 363(b), 363(d), 363(e), 363(f), and 363(l) of the Code. Cash collateral, as defined in § 363(a), is considered property of the estate pursuant to § 541(a)(6). The proceeds from Insurer constitute “cash collateral,” as the Property itself is deemed property of the estate, and these proceeds will be received outside the Debtor’s ordinary course of business. See § 363(a)-(b). Debtor seeks court approval allowing the disbursement of the funds as requested herein.

Debtor believes Creditor and Palmetto Citizens FCU are the only parties with an interest in the cash collateral. See Fed. R. Bankr. P. 4001(b)(1)(B)(i). No additional adequate protection is proposed as the proceeds will be used to repay the secured creditors. See Fed. R. Bankr. P. 4001(b)(1)(B)(iv).

WHEREFORE, Debtor moves this Court for an Order authorizing disbursement of the insurance proceeds as indicated above or for whatever relief the Court deems just and appropriate.

Respectfully submitted.

Reed Law Firm, P.A.

By: /s/ Eric S. Reed

Eric S. Reed

Federal I.D. No. 7242

220 Stoneridge Drive, Suite 301

Columbia, South Carolina 29210

(803) 726-4888

Attorney for the Debtor

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on today's date, she properly served the foregoing Notice of Motion To Use Cash Collateral and Motion to all creditors on the attached mailing matrix by first class mail, postage prepaid.

June 4, 2020

/s/ Krystle Clardy Taylor
Krystle Clardy Taylor
Legal Assistant
220 Stoneridge Drive, Ste 301
Columbia, SC 29210